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Supreme Court, U.S.
FILED
JUL 14 2004
OFFICE OF THE CLERK

No. 03-1702

IN THE

Supreme Court of the United States

OLIVER MANUEL,

Petitioner,

v.

SANDERSON FARMS INC. (PROCESSING DIVISION),

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether every lawsuit that asserts a claim for alleged employment discrimination solely under a state employment discrimination statute states a claim under an analogous federal employment discrimination statute, simply because the plaintiff could have (but did not) allege a violation of the federal statute, and despite the fact that the plaintiff's pleading specifically and unequivocally states that plaintiff is only asserting a claim for alleged violation of the state employment discrimination statute?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent Sanderson Farms Inc. (Processing Division) is wholly owned by Sanderson Farms, Inc.

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STATEMENT OF THE CASE

Petitioner filed "Plaintiff's Original Petition and Jury Demand" on November 22, 2002, in the County Court of Law No. 2 of Brazos County, Texas. (Petitioner's Appendix at A-24). On December 18, 2002, Petitioner's lawsuit was timely removed to the United States District Court for the Southern District of Texas, Houston Division, on grounds of diversity jurisdiction. On January 23, 2003, Petitioner filed "Plaintiff's First Amended Complaint and Jury Demand." (Petitioner's Appendix at A-15). In his lawsuit, Petitioner asserted claims for alleged racial discrimination solely under the Texas Commission on Human Rights Act ("TCHRA"), TEX. LAB. CODE ANN. § 21.051. (Petitioner's Appendix at A-15 through A-30). Petitioner did *not* assert any claims under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). To the contrary, Petitioner's Original Petition and Jury Demand, which was filed in state court, stated that Petitioner was suing for alleged violations of the TCHRA, and it did not mention Title VII or the Equal Employment Opportunity Commission ("EEOC") (Petitioner's Appendix at A-27). Further, in Petitioner's First Amended Complaint and Jury Demand, which was filed in federal court, Petitioner expressly stated: "In his Original Petition . . . **Plaintiff alleged *only* state causes of action under the Texas Commission on Human Rights Act ("TCHRA")** for race discrimination and hostile work environment." (Petitioner's Appendix at A-16) (emphasis added). In the amended complaint, Petitioner also stated: **"Manuel does not concede that this Court has jurisdiction over this lawsuit."** (Petitioner's Appendix at A-16) (emphasis added).

Pursuant to an order issued by the District Court, Respondent Sanderson Farms Inc. (Processing Division)

("Sanderson Farms") filed its Motion for Summary Judgment on March 21, 2003. In its motion, Sanderson Farms argued that Petitioner's claims were time-barred under Texas law and that they failed on the merits. The District Court granted Sanderson Farms' motion. (Petitioner's Appendix at A-1 through A-4). On appeal, the Fifth Circuit affirmed the judgment of the District Court, ruling that Petitioner's claims were time-barred under Texas law because Petitioner had failed to file his Charge of Discrimination with the TCHR within 180 days of the allegedly discriminatory acts. (Petitioner's Appendix at A-5 through A-12).[1] Petitioner does not challenge the Fifth Circuit's ruling that his TCHRA claims were time-barred under Texas law.

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1. A person alleging employment discrimination under the TCHRA must file a complaint with the TCHR within 180 days after the alleged discriminatory act occurred. *See* TEX. LAB. CODE ANN. § 21.202(a) ("A complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred."); *Specialty Retailers, Inc. v. DeMaranville*, 933 S.W.2d 490, 492 (Tex. 1996). The 180 day time limit for filing a complaint with the TCHR is *mandatory* and *jurisdictional*. *See Specialty Retailers, Inc.*, 933 S.W.2d at 492. Therefore, employment discrimination claims brought under the TCHRA are time-barred when a complaint is filed with the TCHR after the 180 day deadline. *Pope v. MCI Telecommunications Corp.*, 937 F.2d 258, 263-64 (5th Cir. 1991), *cert. denied*, 504 U.S. 916 (1992).

REASONS FOR DENYING THE PETITION

I. Petitioner's Pleadings Do Not State A Claim Under Title VII.

In his Petition, Petitioner does not challenge the Fifth Circuit's ruling that his TCHRA claims were time-barred under Texas law. Instead, Petitioner asserts that the Fifth Circuit erred by "ignoring" his "Title VII" claims and by affirming the District Court's judgment solely on grounds that he had failed to comply with time limitations for filing a charge of discrimination under the TCHRA. In this regard, Petitioner contends his "well-pleaded complaint" stated a claim under Title VII merely because it alleged facts that could have supported a Title VII claim, even though Petitioner's operative pleading: (1) specifically stated that Petitioner "only" alleged claims under the TCHRA; (2) did not mention Title VII; and (3) stated that Petitioner did not concede that the District Court had jurisdiction.[2] (Petitioner's Appendix at A-16, A-27).

Petitioner's assertion is not correct. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists *only* when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (emphasis added). A plaintiff is the "master of the claim" and "he or she may avoid federal [question] jurisdiction by exclusive reliance on state law." *Id.*

2. If Petitioner had been pursuing federal Title VII claims as well as state law TCHRA claims, there would be no basis for his refusal to concede that the District Court had jurisdiction because it is self-evident that federal courts have jurisdiction over lawsuits that assert violations of federal statutes. *See* 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").

Accord Carpenter v. Wichita Falls Independent School District, 44 F.3d 362, 366 (5th Cir. 1995) ("[a] plaintiff with a choice between federal- and state-law claims may elect to proceed in state court on the exclusive basis of state law."). Moreover, "[j]urisdiction may not be sustained on a theory that the plaintiff has not advanced." *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 809 n.6 (1986). Thus, the mere fact that Petitioner's First Amended Complaint and Jury demand alleges facts that could have supported a Title VII claim is not sufficient to stated a claim under Title VII. *See Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 344 (9th Cir. 1996) ("That the same facts could have been the basis for a Title VII claim does not make Rains' wrongful termination claim into a federal cause of action. Rains chose to bring a state claim rather than a Title VII claim, and was entitled to do so."); *accord Easton v. Crossland Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997) (holding that a complaint which alleged state law claims and sought state law remedies did not state a claim arising under Title VII, even though the complaint included incidental references to Title VII); *Broce v. ARCO Pipe Line Co.*, 28 Fed. Appx. 653, 654-55 (9th Cir. 2002) (holding that a claim alleging veteran status discrimination under state law did not state a claim under federal law); *Willy v. Coastal Corp.*, 855 F.2d 1160, 1170 (5th Cir. 1988) (holding that a state law wrongful discharge claim which could have supported a claim for alleged violation of federal whistleblower statutes did not arise under federal law).[3]

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3. *See also Knestrick v. IBM Corp.*, 945 F. Supp. 1080, 1081-82 (E.D. Mich. 1996) (holding that a lawsuit filed in state court for

(Cont'd)

In support of his meritless argument, Petitioner cites several cases for the proposition that a party need not name the correct legal theory to state a claim for alleged violation of federal law. The cases cited by Petitioner are inapposite. None of those cases hold that a state law action, filed in state court, which only asserts state law claims, states a claim for alleged violation of a federal statute merely because it is based on alleged facts that could support a claim for alleged violation of a federal statute. Indeed, *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000), which Petitioner cites in support of his contention that a party need not name the correct legal theory, actually contradicts Petitioner's position. In *Simonton*, the plaintiff filed an action under Title VII, alleging that he was subjected to discrimination and harassment based on his sexual orientation. *Id.* at 34. Inasmuch as Title VII does not provide a cause of action for discrimination based on sexual orientation,[4] the district court dismissed the action for failure to state a claim. On appeal, the plaintiff argued that his lawsuit stated a claim under Title VII because it could be construed as a claim for sex discrimination. The Fourth Circuit rejected the plaintiff's argument. Although it noted the general rule that a party need not assert the correct legal theory, the court observed that the plaintiff's complaint unequivocally and

(Cont'd)
alleged violation of Michigan's employment discrimination statute did not state a claim for alleged violation of Title VII); *Pointer v. Crown Cork & Seal Co., Inc.*, 791 F. Supp. 164, 166-67 (S.D. Tex. 1992) (holding that a lawsuit filed in state court for alleged violation of the TCHRA did not state a claim for alleged violation of Title VII, despite the fact that plaintiff had previously filed a lawsuit in federal court for alleged violation of Title VII based on the same alleged facts).

4. *See, e.g., Wrightson v. Pizza Hut of Am., Inc.*, 99 F.3d 138, 143 (4th Cir. 1996).

specifically alleged only sexual orientation discrimination. *See id.* at 37 ("there is no basis to infer from the complaint that the harassment Simonton suffered was because of his sex and not, *as he urges throughout his complaint*, because of his sexual orientation.") (emphasis added). Therefore, the appellate court affirmed the trial court's dismissal of the plaintiff's lawsuit. *Id.* at 38. Likewise, as explained above, Petitioner specifically alleged that his claims *only* arose under the TCHRA. (Petitioner's Appendix at A-16). Consequently, there is simply no basis for Petitioner's assertion that his lawsuit arises under Title VII.

The cases cited by Petitioner are also inapplicable because Petitioner did not name an "incorrect" legal theory in his complaint. Rather, the TCHRA *is* a correct legal theory because it prohibits employment discrimination and provides remedies to aggrieved individuals. *See* TEX. LAB. CODE ANN. §§ 21.051, 21.258, 21.2585, and 21.259. The fact that Petitioner's TCHRA claim was barred by limitations does not make it an "incorrect" legal theory. The Fifth Circuit implicitly recognized that fact in *Pope*, when it held that a plaintiff's TCHRA claim was barred by limitations even though an identical claim would have been timely had it been brought under Title VII. *See Pope*, 937 F.2d at 264.

Petitioner also erroneously asserts that the Fifth Circuit's decision contradicts *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002), by requiring a "heightened" standard of pleading for federal employment discrimination claims. According to Petitioner, the Fifth Circuit required this "heightened" standard of pleading by implicitly requiring that his complaint identify Title VII in order to state a claim under Title VII. Petitioner's argument is ludicrous. *Swierkiewicz* is completely inapplicable to this case. In *Swierkiewicz*,

the issue was "whether a complaint in an employment discrimination lawsuit must contain specific facts establishing a prima facie case of discrimination under the framework set forth by this Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed. 668 (1973)." *Swierkiewicz*, 534 U.S. at 508. This Court held that an employment discrimination plaintiff need not allege specific facts supporting a prima facie case under the *McDonnell Douglas* framework in order to state claims under Title VII or the Age Discrimination in Employment Act ("ADEA"). *Id. Swierkiewicz* provides absolutely no support for Petitioner's assertion that a complaint states a claim under Title VII where it: (1) does not mention Title VII; and it (2) expressly states that it is *only* asserting claims under a state employment discrimination statute, as Petitioner's First Amended Complaint and Jury Demand stated in this case. Indeed, the plaintiff in *Swierkiewicz* specifically alleged that his lawsuit was being brought under Title VII and the ADEA. *Id.* at 509, 514. Accordingly, Petitioner's assertion that the Fifth Circuit's decision in this case contradicts *Swierkiewicz* has absolutely no merit.

II. Acceptance Of Petitioner's Contentions Would Eviscerate The Well Pleaded Complaint Rule And Make Virtually Every Lawsuit Removable To Federal Court.

In his Petition, Petitioner correctly notes that many states have adopted employment discrimination laws that mirror their federal counterparts. Petitioner also correctly notes that, as a result of the similarity in state and federal employment discrimination statutes, the same factual allegations may often support claims under both state law and federal statutes such as Title VII. What Petitioner apparently fails to understand is that acceptance of his argument would result

in the complete destruction of the well pleaded complaint rule and it would make *every* employment discrimination lawsuit removable to federal court. Likewise, even outside the context of employment discrimination, every state court lawsuit would be removable to federal court where federal law and state law provided for similar causes of action. Plaintiff has provided absolutely no justification for such a revolutionary revision of this Court's precedents regarding federal question jurisdiction.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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